

REMARKS:

The Examiner's care in reviewing the specification and claims is greatly appreciated. Consideration of the application in view of the amendment of claims above and remarks below is respectfully requested.

5 The Office Action notes Applicant's election without traverse of the Group II and states that Applicant indicates that all presently pending claims encompass the use of "cardboard" material. Applicant would note that Group II is drawn to a "cardboard box," not "cardboard"—the restriction requirement by the former Examiner stated that "the products are clearly mutually
10 exclusive because a cardboard box cannot be any of the other forms recited in the claims." (Page 3).

Claims 40, 41, 44 and 45 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

15 Claims 40 and 41 are stated to be confusing and indefinite as related to the presence and/or absence of liquid in the claimed product. It is unclear whether the claimed product includes or excludes "liquid" as claims 40 and 41 encompass absence of "liquid" but they depend on claim(s) 38 and 39 that require "liquid" as an additional component. Thus, the claims 40 and 41 are
20 stated to be improper claims at the very least.

Claims 40 and 41 have been cancelled above. It is therefore requested

that the rejections under 35 U.S.C. § 112, second paragraph, be withdrawn.

Claims 44 and 45 encompass incorporation of an “educational kit” such as map and, thus, appear to extend rather than further limit the claimed invention. Claims 44 and 45 are stated to be indefinite, confusing and they do not make sense because they encompass the use of “cardboard” material as “educational kit” or “map” wherein the “cardboard” material is “infused” with the fungal inoculant according to claims 35 and 42. Thus, the concept of the educational map infused with fungal inoculant is unclear as claimed and when read in the light of the specification.

Applicant would respectfully argue that claim 44 does not “extend” the claimed invention in that use of the cardboard box of the present invention as a component of an educational kit adds a further limitation to the claimed invention; the claim 44 covers the cardboard box as used in an educational kit. The claim requires not only the cardboard box of claims 35 and 42 as a component, but also any additional components of an “educational kit.”

Claim 45 has been cancelled above.

It is therefore respectfully requested that the rejections of claims 44 and 45 under 35 U.S.C. § 112, second paragraph, be withdrawn.

Claims 27, 28, 33-43, 48 and 97-99 are rejected under 35 U.S.C. § 102(b) as being anticipated by US 4,589,225 (Stensaas).

US 4,589,225 (Stensaas) is stated to disclose a delivery system intended

to benefit and to fertilize crops and other plants, comprising 1) a “primary packaging” material, 2) a fungal inoculant or “propagules of MF” microorganisms and seeds. The disclosed seeds belong to generic plants including crops and woody plants within the broadest meaning of claims 33
5 and 48.

The disclosed fungal inoculant or “propagules of MF” include spores and mycelium or hyphae. The disclosed “MF” microorganisms are generic mycorrhizal fungi, including the ecto- and endo- forms that are capable of colonizing roots. Thus, the office action states, the “MF” microbial inoculant as
10 disclosed falls within the broadest reasonable meaning of the claimed terms “saprophytic” and “mycorrhizal fungi” of the claims 1 and 98.

The “primary packaging” is a “cardboard” box material such as cellulosic fibers that is shaped into desired forms including corrugated cardboard-type packages with the meaning of, for example, the claims 1, 36 and 99. A
15 disclosed composition is provided with an outer cover or envelope, and, thus, the fungal inoculant and seeds “are packaged separately from the cardboard box” materials within the meaning of claim 28.

The disclosed delivery system might be dry, moist or wet and, thus, it comprises liquid that is present or that is removed within the meaning of
20 pending claims 34 and 38-41. The disclosed delivery system incorporates glues, adhesives, etc.

The cited patent is also stated to teach the concept of cardboard box material being “infused” with the fungal inoculant since the fungal spores and mycelium are incorporated into the cellulosic support matrix that is shaped into strips or cardboard packages.

5 Thus, the Office Action states, the cited patent US 4,589,225 (Stensaas) teaches a delivery system for mycotechnologies that comprises identical components as required for the claimed product. Thus, the cited patent US 4,589,225 (Stensaas) is stated to anticipate the claimed invention.

10 Applicant would respectfully argue that the cited patent does not disclose the use of *both* saprophytic and mycorrhizal fungi; the application seems to discuss o “MF” propagules. However, applicant would note references in an earlier Information Disclosure Statement that disclose use of both saprophytic and mycorrhizal fungi with plants or crops.

15 Even assuming, *arguendo*, that the separate elements of corrugated cardboard, seeds and saprophytic and mycorrhizal fungi are disclosed to make a seed container suitable for planting, Applicant would respectfully argue that such does not anticipate a container comprising a cardboard box capable of holding other goods. The reference discloses cardboard containing seeds and spores; it does not disclose use as a cardboard box.

20 It is therefore respectfully requested that the rejections under 35 U.S.C. § 102(b) be withdrawn.

Claims 27, 28, 33-43, 48 and 97-99 are rejected under 35 U.S.C. § 103(a) as being unpatentable over US 4,589,225 (Stensaas) taken with US 5,022,182 (Anderson) and Ineichen *et al.* (Changes in the fungus-specific, soluble carbohydrate pool during rapid and synchronous ectomycorrhizal formation of *Picea abies* with *Pisolithus tinctorius*", Mycorrhiza, 1992, 2(1) pages 1-7).

Again, Applicant would respectfully argue that the cited patents do not disclose the use of *both* saprophytic and mycorrhizal fungi.

Applicant would also respectfully argue that the cited patents do not make obvious a container comprising a cardboard box capable of holding other goods—neither reference uses the word “box.” Clearly what is contemplated is cardboard as a delivery system for seeds and spores (Stensaas) or cardboard as a substrate or culture medium for mycorrhizal fungi prior to contact with the root system of *Picea abies* (Ineichen *et al.*).

Applicant would further argue that Ineichen *et al.* actually teaches away from the present invention in that it teaches separate culturing of the mycorrhizal (*Pisolithus tinctorius*) fungi and contact with the entire root system of three month old *Picea abies*. As the reference teaches away from the use of seeds as in the present invention, it cannot make the present invention obvious.

It is therefore respectfully requested that the rejections under 35 U.S.C. § 103(a) be withdrawn.

US 4,589,225 is stated to be relied upon as explained above for the disclosure of a mycotechnologies delivery system intended to benefit plant growth and to fertilize plants that comprises cellulosic matrix used for making cardboard packages, fungal inoculant of mycorrhizal microorganisms and plant seeds. The microorganisms and plant seeds combined with cardboard materials are generic as disclosed by US 4,589,225 (Stensaas). However, the reference by Ineichen *et al.* demonstrates that mycorrhizal microorganism such as *Pisolithus tinctorius* is capable to colonize cardboard materials and develop ectomycorrhizal on root systems of plans such as *Picea abies* (for example: see abstract).

US 4,589,225 (Stensaas) is lacking particular disclosure about the presence of additional “educational” materials and rescue kit components made from or packaged in cardboard materials. However, US 5,022,182 (Anderson) is stated to demonstrate incorporation of informational tags and indicators fabricated from cardboard into the delivery systems of seeds and plant fertilizers including beneficial microorganisms.

Applicant would first argue that an informational tag or indicator identifying the active ingredients in the associated receptacle (column 8, lines 17-23) does not disclose an “educational kit” or a “rescue kit.”

Applicant would further argue that Anderson actually teaches away from the present invention as it teaches the need for additional nutrients such as urea-formaldehyde fertilizer.

Also, as argued above, the underlying invention of a cardboard box,
5 fungal inoculum and seeds is not disclosed by Stensaas.

Furthermore, there is no suggestion to combine the references. It is therefore respectfully requested that the rejection under 35 U.S.C. § 103(a) be withdrawn.

The Examiner has stated, therefore, that it would have been obvious to
10 one having ordinary skill in the art at the time the claimed invention was made to use cardboard materials and boxes for delivery of mycotechnologies systems as taught, suggested and adequately demonstrated by the cited prior art. Thus, the claimed invention as a whole is said to be clearly *prima facie* obvious, especially in the absence of evidence to the contrary. Therefore the claims are
15 stated to be properly rejected under 35 U.S.C. § 103.

Applicant would again argue that the references simply do not, either alone or in combination, disclose a cardboard box, fungal inoculum and seeds, nor do they disclose educational and/or rescue kits. It is therefore respectfully requested that the rejections under 35 U.S.C. § 103(a) be withdrawn.

20 Consideration of the application in view of the election of the amendment of claims and remarks above is respectfully requested. The Examiner is invited

to telephone the undersigned if a telephonic interview would expedite
resolution of any remaining matters.

Respectfully Submitted,

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 Date

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